

Sign Language Interpreters: US Court Says Hospital Discriminated Against Deaf Patient.

The US District Court for the Middle District of Georgia ruled that a hearing-impaired patient has the right to sue the hospital for violation of her rights as a disabled person guaranteed by the Americans With Disabilities Act.

ASL Is Patient's Primary Method of Communication

The fifty-four year old patient was not born deaf but has been deaf since age three. She can use her voice to speak but most of what she vocalizes is not intelligible to the hearing population at large. She has some ability to read lips.

She can also read and write hand-written messages. However, according to the court, because of differences in vocabulary and syntax between American Sign Language (ASL) and English, hand-written messages are far from an ideal alternative to ASL for discussion of complex subjects.

Factual Backdrop to Disability Discrimination Claim

The patient's ob/gyn scheduled her to come to the hospital for non-emergency outpatient surgery to repair a problem with her bladder.

During the surgery her intestine was perforated, leading to septic shock which landed her in intensive care for almost six weeks. Her treatment in intensive care became the focus of her lawsuit.

Invasive Procedure Not Explained to Patient

Two days into her stay in intensive care it became necessary, as the court phrased it, to insert a tube down the patient's throat.

A nurse phoned one of the patient's two adult hearing children, highly skilled in ASL, to come to the hospital.

However, the nurses went ahead with the tube before the son arrived at the hospital and without any attempt, however ineffective, to explain to the patient what was going on.

The patient claimed in court she thought the nurses were just going to give her some medication and really had no idea what the nurses were trying to do to her.

Discrimination against hearing-impaired individuals by healthcare facilities was outlawed in general terms by the Americans With Disabilities Act.

Federal regulations now spell out facilities' specific responsibilities.

Healthcare facilities must furnish appropriate auxiliary aids and services where necessary to afford an individual with a hearing disability an equal opportunity to participate in, and enjoy the benefits of, services provided by the facility to hearing individuals.

In determining what type of auxiliary aid and service is necessary a healthcare facility must give primary consideration to the requests of the disabled individual.

The phrase "auxiliary aids and services" includes qualified interpreters, notetakers, transcription services, written materials, handset amplifiers, assistive listening devices, telephones compatible with hearing aids, closed caption decoders, TDD's, videotext displays or other methods of making aurally delivered materials available to individuals with hearing impairments.

UNITED STATES DISTRICT COURT
GEORGIA
July 31, 2008

Family Members Are Not Appropriate If Patient Requests An Interpreter

As far as the patient's rights were concerned it was a moot point whether or not the nurses waited until the son arrived at the hospital to go ahead with the tube, according to the court's reading of the pertinent Federal regulations.

A hearing-impaired patient has the right to request a qualified sign-language interpreter, even if family members are competent and available on-site to interpret for the patient.

The family had requested an interpreter but the first time anyone paid any attention was when the son's complaint about the tube incident landed on the risk manager's desk. It still took weeks to locate someone with some knowledge of ASL who was not a certified interpreter. Then it took about another week for the hospital to sign on a certified interpreter.

Patient May Request Certified Interpreter

The court made the point that a hearing-impaired patient has the right to request a certified interpreter, not just someone who happens to have some ability to interpret ASL who is not actually certified.

Compensatory Damages

Even if the patient's rights have been violated by a single episode or by an overall course of discriminatory conduct, the patient is not entitled to compensation unless the patient can show intentional discrimination or bad faith.

That is, for the patient to be entitled to compensation, a person at the healthcare facility with authority to take appropriate action, such as a supervisor, must have been aware of the patient's disability and the patient's needs, must have had an opportunity to accommodate the patient's needs and must have nevertheless acted or failed to act out of deliberate indifference.

Compensation can be awarded to the patient for emotional distress. Additional compensation is appropriate if an adverse medical outcome can be traced to violation of the patient's rights, which was not the situation here. ***Boyer v. Tift County Hosp.***, 2008 WL 2986283 (M.D. Ga., July 31, 2008).